

DELEGATE WILLONER: All right. I would like to offer, then, Amendment H.

DELEGATE J. CLARK (presiding): The Chair recognizes Delegate Moser.

DELEGATE MOSER: There are a number of amendments including Amendment X which I have offered. In view of the Chair's ruling that the committee amendment should be considered first, I would respectfully request that any delegates who are contemplating suggesting amendments to this section have theirs distributed so that at least they will be before the Convention at the time each amendment is voted on.

I would much prefer voting personally on the complete elimination, and then going forward to those amendments which are the simplest first, since mine happens to be the next simplest. I do think we ought to have all of them in front of us.

DELEGATE J. CLARK (presiding): Very well. The pages will distribute all amendments to section 8 so that the delegates will have them before them.

The amendment that you wish to take up first is H, is that right?

DELEGATE WILLONER: Yes.

DELEGATE J. CLARK (presiding): Delegate Scanlan.

DELEGATE SCANLAN: As I understand the Chair's answer to Mr. Moser's suggestion, all the various amendments that would mean the section will be taken up prior to the amendment which has for its sole purpose the elimination of this section. I do not know if my amendment is going to be voted up or down. If my amendment passes, it would be unnecessary to consume the time and attention of this Assembly in debate upon a section that may not remain in the Constitution.

I suggest in the interest of time, whatever your feeling may be on my amendment, that you deal with it first. If it loses, you can proceed to the other amendments.

DELEGATE J. CLARK (presiding): Are you willing to accept this?

DELEGATE WILLONER: I think it would be better procedure. I think that is the most logical way for everyone to vote on this.

DELEGATE J. CLARK (presiding): Very well. We will go back to Delegate Scanlan's amendment and vote on that first.

Delegate Mitchell.

DELEGATE MITCHELL: Mr. President, I think it would be appropriate if Delegate Willoner would state to the body what the Committee deliberated on with regard to this section, how it felt about this section, what its intentions are. This I think would give meaning to the discussions which will follow.

DELEGATE J. CLARK (presiding): Delegate Willoner.

DELEGATE WILLONER: Well, to explain it as quickly as possible, the intent of the Committee was originally to protect the right that we now have to remove civil cases absolutely. But after discussion with several members of this body after the Committee Report was prepared, I would call it a compromise position. In any event, it was a position that would obviate the problems referred to by Delegates Scanlan and Powers in a debate that we had on this when it was in the judicial section. Committee Amendment H was prepared which allows the right of removal. The amendment begins, "In all actions at law." This excludes the equity aspects of it in the Committee Report because the Court of Appeals in a rather strange, but I think rather proper, decision eliminated equity from the present Constitution. The amendment states that in all actions at law if a party suggests in writing that he cannot have a fair and impartial trial in which the action is pending, the Court shall by rule move the trial out of the county.

In other words, this would contemplate regulation which would permit the court to require an election within a reasonable time prior to trial. If they felt ten days or thirty days prior to trial that an election would have to be made, then this would be a proper regulation.

The decisions in this area, because of the nature of the right, have been extremely restrictive and have prohibited any regulation in this area whatsoever. The present provision in section 8 is just far too restrictive and allows no flexibility. This amendment would permit the right of removal which we think is a valid and lawful safety valve. Where a party feels in a particular jurisdiction that he cannot have a fair trial that he can, without having to establish this to a Court except by way of an affidavit, have his trial removed. This could be regulated by the Court of Appeals so that it would not be abused. However, it is sufficiently and importantly enough a safety valve that it should be preserved.